IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11707 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YOGITABEN RAMESHBHAI BABUBHAI DHODIYA PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11707 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/01/2005

ORAL JUDGEMENT

1. By way of filing this Special Civil Application under Article 226 of the Constitution of India, the

petitioner has challenged his detention in pursuance of the order of detention passed by the District Magistrate, Bharuch against the petitioner on 12.07.2004 in exercise of powers conferred upon him by Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ["PASA Act" for short]. The petitioner came to be detained as bootlegger in pursuance of the above said order from 17.07.2004.

2. The grounds as placed on record of detention reveal that the detaining authority relied upon two crimes registered against the petitioner before Western Railway Police Station, Bharuch under Sections 66B, 65AE and 116B of the Bombay Prohibition Act, one on 12.06.2003 and second on 23.05.2004. It is alleged that the petitioner was found in possession of foreign liquor in both the cases. The detaining authority also relied upon one incamera statement of a witness recorded on 23.06.2004 by sponsoring authority and verified on 05.07.2004 by the detaining authority. The statement reveals the incident of 23.05.2004 wherein the witness while was selling peanuts in trains, the petitioner stated him to carry her luggage kept in ladies compartment upto platform at Palej. The witness agreed to assist and carried the luggage of petitioner but on suspicion he opened the bags of luggage and found that there were bottles of foreign liquor and, therefore, he refused to assist the petitioner in carrying her luggage. On refusal, the petitioner threatened the witness and told that she had many persons at Karjan and Palej and if the witness informs to anybody about transporting of the foreign liquor by the petitioner then the witness would be thrown out from the train and would be done to death. Due to fear of the petitioner, the witness did not report the incident to the police. From the above material, the detaining authority came to the conclusion that the petitioner was head strong and ferocious lady and was dealing in storing, selling and transporting bulks of foreign liquor. Due to this activity, atmosphere of terror is created around Palej Railway Station and public order is disturbed. Due to fear and terror of the petitioner, nobody came forward to file any complaint against her. The detaining authority reached to a subjective satisfaction that knowing fully well that the consumption of liquor was adversely affecting the public health, the petitioner continued her illegal activity and, therefore, the detaining authority considering the petitioner to be bootlegger within the meaning of PASA Act and passed the order of detention, which is under challenged in this petition.

3. Learned advocate Mr.M.R.Prajapati, for the petitioner and learned AGP Mrs.H.B.Punani, for the respondent No.3 were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by the learned AGP is also taken into consideration.

4. Out of various grounds, pressed into service by the learned advocate for the petitioner and controverted and opposed by the learned AGP, it appears that the petitioner can be disposed of, by examining the issue whether from the material placed before the detaining authority could it be set that the public order was disturbed or public health was adversely affected.

5. The facts of this case are squarely covered by the decision of the Division Bench of this Court in the matter of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Ors., reported in 2000 (1) G.L.H. 393. In the present case, the detaining authority relied upon two types of materials, firstly, the registration of crimes under the Bombay Prohibition Act against the petitioner and secondly incamera statements. The registration of crime against the petitioner under the Bombay Prohibition Act, cannot be said to be activity prejudicial to the maintenance of public order or adversely affecting the public health. Going through the incamera statement, it appears that nothing in the said statement indicating the disturbance of public order or public health, there must be some credible material to come to the conclusion that activity of the petitioner was affecting public at large. A line as to be drawn between "disturbance of public order" and "breach of law and order". At the most the material which the detaining authority relied upon, may be sufficient to reach to the conclusion that there was a breach of law and order, but there was no material indicating the disturbance of maintenance of public order and public health. In the above mentioned decision of the Division Bench of this Court [Ashok Jivrajbhai], this Court has observed in paragraphs No.21 and 22 as under:-

> "21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances

could not be upheld.

Again, in Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police and others, 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases.

22. So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

6. In above view of the matter, the order under challenge is required to be quashed and set aside on the ground that there was no material before the detaining authority to reach to a subjective satisfaction that the activity of the petitioner was prejudicial to the maintenance of public order and adversely affected the public health.

7. In the result, in view of the above discussion, this application is allowed. The order of detention dated 12.07.2004 passed against the petitioner by District Magistrate, Bharuch in exercise of powers conferred upon him by virtue of Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner Yogitaben Rameshbhai Babubhai Dhodiya Patel is ordered to be set at liberty forthwith, if she is not required to be

detained for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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